

DISCUSSION OF THE AMENDMENT

Claims 1-2, 12, 16-25, 27-29, 33, 35-37, 39 and 43-45 are active in the present application. Claims 3-11, 13-15, 26, 30-32, 34, 38, 40-42 and 46-58 are canceled claims. Independent Claim 1 is amended to recite an amount of 5-20% by weight of an alkyl(meth)acrylate polymer in an amount of 70-95% by weight of an oxygen-containing compound. Support for the amendment is found in the specification on page 5, lines 4-5.

No new matter is added.

REMARKS

The Office asserts that the claims are obvious over a combination of Roos (US 6,403,746) and Kinker (US 5,696,066). Applicants submit that those of ordinary skill in the art would have no reason to combine Roos and Kinker to arrive at the presently claimed invention.

Claim 1 now requires that the alkyl(meth)acrylate polymer is present in an amount of from 5 to 30% by weight based on the total weight of the claimed functional fluid. Present Claim 1 stands in contrast to the Kinker patent which describes a lubricating oil composition containing at most 2 wt.% of a polymer. The presently claimed invention is different from Kinker at least because the minimum amount of alkyl(meth)acrylate polymer present in the claimed functional fluid must be at least 5% by weight whereas Kinker discloses a composition wherein a polymer may be present in an amount of no more than 2 wt.%.

Kinker does not disclose any composition having an amount of polymer that overlaps or touches the minimum amount of polymer required to be present in the claimed invention. In effect, the presently claimed invention and Kinker are mutually exclusive because there is no overlap in the amount of polymer that must be present in the respective compositions.

Applicants submit that those of skill in the art would have no reason to modify Roos in a manner that is contradictory to Kinker. One of skill in the art would not turn to Kinker as a teaching relevant to preparing a functional fluid having a minimum amount of polymer that is more than twice the maximum amount of polymer permitted in the Kinker compositions. Although the Office asserts that Kinker teaches the utility of oxygen-containing esters in producing efficient lubricating oils, Applicants point out that Kinker nowhere discloses or suggests that such compounds may be used in compositions that contain amounts of polymer that are substantially greater than the maximum amount of polymer that may be present in the Kinker prior art lubricating oil compositions.

Applicants thus submit that those of skill in the art would have no basis for combining Roos with Kinker to arrive at the presently claimed invention. Applicants request withdrawal of the rejection.

In a like manner with regard to Mottus (US 3,311,597) the Office acknowledges:

Mottus et al. do not teach the instantly claimed properties of the composition or the weight ratios of polymers to oxygen containing compounds.

See paragraph no. 8 on page 7 of the August 23, 2007 Office Action.

Therefore, as explained above for the combination of Roos and Kinker, Applicants submit that those of skill in the art would not combine Mottus with Kinker.

As explained above, the prior art relied on by the Office does not disclose or suggest all of the present claim limitations; namely, a composition containing a polymer in an amount of 5-30% by weight and an oleate-type oxygen containing compound. Thus, the prior art cannot render the presently claimed subject matter obvious. Applicants request withdrawal of the rejections.

For the reasons discussed above in detail, Applicants request withdrawal of the rejections and the allowance of all now-pending claims.

Respectfully submitted,

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